

Directions to Sandwell and West Birmingham Hospitals NHS Trust issued under the Private Healthcare Market Investigation Order 2014

Background

1. On 4 April 2012, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 (the Act) concerning the supply of privately-funded healthcare services in the UK.
2. On 2 April 2014, the successor body to the CC and the OFT, the CMA published its report titled *Private healthcare market investigation: Final report* (the report). In the report, the CMA concluded that:
 - (a) features of the markets for privately-funded healthcare services each (and in certain circumstances in combination), prevent, restrict or distort competition, and thereby have an adverse effect on competition (AEC); and
 - (b) the CMA should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them.
3. On 1 October 2014, the CMA made the Private Healthcare Market Investigation Order 2014 (the Order), in performance of its duty under section 138 of the Act for the purpose of remedying, mitigating or preventing the AECs and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the AECs as identified in the report.
4. Among other things, the Order requires that every operator of a private healthcare facility (including NHS hospitals treating private patients) supply to the [Private Healthcare Information Network](#) (PHIN), being the approved information organisation under Part 4 of the Order, the information described in Article 21 of the Order¹ quarterly from a date no later than 1 September 2016.
5. PHIN and the CMA have attempted without success to secure sufficient compliance with Article 21 (Information concerning performance) of the Order from the Sandwell and West Birmingham Hospitals NHS Trust. Having taken

¹ As amended by Article 2.1 of the Private Healthcare Market Investigation (Variation and Commencement) Order 2017.

into consideration the detriment arising from this non-compliance, the CMA has decided to give directions to the hospital named above (the Directions).

6. The requirements imposed on Sandwell and West Birmingham Hospitals NHS Trust by the Directions are, in summary, to carry out the activities set out in paragraphs 3.1(a) to (e) of the Directions to ensure compliance with Article 21 of the Order is achieved by no later than 31 March 2018.
7. The CMA may apply to the court seeking an order requiring any person who has failed to comply with directions to comply with them or otherwise remedy his failure, within such time frame as specified in the order.²
8. The CMA has also published a [press release](#) listing the hospitals to whom it has decided to give Directions for the purpose of securing compliance with Article 21 of the Order.

² Subsections 87(4) – (8) of the Act as applied by subsection 164(2)(b).

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The CMA makes these directions to Sandwell and West Birmingham Hospitals NHS Trust based at Dudley Road, Birmingham, West Midlands, B18 7QH, under Article 4 of the Private Healthcare Market Investigation Order 2014 (the Order).

1. General – title and commencement

- 1.1 These directions may be cited as ‘The Private Healthcare Market Investigation Sandwell and West Birmingham Hospitals NHS Trust Directions 2017’ (the Directions).
- 1.2 The Directions come into force on 1 September 2017.
- 1.3 Once in force these Directions will continue to be in force until such time as they are varied or revoked by the CMA under the Order. The variation or revocation of these Directions does not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

2. Interpretation

- 2.1 In these Directions terms have the same meaning as in the Order, unless stated otherwise.
- 2.2 For the purposes of these Directions:
 - (a) ‘**PHIN**’ means the Private Healthcare Information Network, being the approved information organisation under Part 4 the Order.
 - (b) ‘**PROMs**’ means the patient reported outcome measures, as specified by PHIN.
- 2.3 The headings used in these Directions are for convenience and have no legal effect.

3. Actions specified with respect to achieving compliance with Article 21 of the Order

- 3.1 Sandwell and West Birmingham Hospitals NHS Trust must:
 - (a) By no later than 30 September 2017:
 - (i) pay any subscription fees due to PHIN in accordance with Article 21.4 of the Order,

- (ii) provide any preliminary information and approvals as PHIN may reasonably require as a precondition to the operator of the private healthcare facility supplying PHIN with the information required under Articles 21 of the Order, including, for example, contact information, and by signing and returning PHIN's Subscription & Information Sharing Agreement,
- (b) By no later than 30 September 2017 begin systematic collection of the following information, as specified by PHIN:
 - (i) private patient admissions data with diagnostic and procedure coding,
 - (ii) adverse events data, and
 - (iii) patient feedback and experience data relating to the private healthcare facility,

on the basis specified in Article 21 of the Order, that is, for every private patient episode undertaken at the private healthcare facility and sufficiently detailed and complete to enable PHIN to publish the specified types of performance measures by procedure at both hospital and consultant level, noting in particular the specific requirements of the Order at Article 21.2 and further noting the likely necessity to obtain consent from patients for the sharing of data,
- (c) By no later than 31 October 2017 begin successful submission of the private patient admissions, adverse events and patient feedback and experience data (as described above at 3.1(b)) to PHIN on a no-less-than-quarterly basis, with 'successful' being defined by PHIN with reference to submission of files by the means specified by PHIN and the completeness, validity and accuracy of the information therein contained,
- (d) By no later than 31 December 2017 begin systematic collection of PROMs information, for all procedures where the volume of procedures undertaken gives rise to a reasonable expectation that it would support the subsequent production of statistically robust information,
- (e) By no later than 31 March 2018 begin successful submission of the PROMs information to PHIN on a no-less-than-quarterly basis, with 'successful' being defined by PHIN with reference to submission of files by the means specified by PHIN and the completeness, validity and accuracy of the information therein contained.

4. Monitoring and compliance

- 4.1 Sandwell and West Birmingham Hospitals NHS Trust must inform the CMA in writing and signed by the Chief Executive when it has started to comply with paragraph 3.1(c) of these Directions (successful submission of the private patient admissions, adverse events and patient feedback and experience data to PHIN).
- 4.2 Sandwell and West Birmingham Hospitals NHS Trust must submit the above information to the CMA within 30 days of complying with the requirements in paragraph 3.1(c) of these Directions and in any event, no later than 30 November 2017.

Adam Land
Senior Director
Signed by authority of the CMA Board
31 August 2017